

# Private Actors and the State: Internationalization and Changing Patterns of Governance

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*This article investigates the implications of political and economic internationalization on patterns of governance from a statecentric perspective. The actual patterns of governance in internationalized environments can be related to the respective governance capacity of public and private actors, which hinges in turn on the strategic constellation underlying the provision of a public good. The specific strategic constellation varies in three dimensions: the congruence between the scope of the underlying problem and the organizational structures of the related actors, the type of problem, and the institutional context, all of which involve a number of factors. With this concept in mind, we identify four ideal-typed patterns of governance, enabled by different configurations of public and private capacities to formally or factually influence in various ways the social, economic, and political processes by which certain goods are provided.*

## INTRODUCTION

There seems to be a general consensus that the economic and technological changes generally discussed under the catchphrase “globalization” have significantly affected the conditions for domestic governance. In particular, both the internationalization of markets and the emergence of transnational information and communication networks challenge the autonomy and effectiveness of national governments in defining and providing public goods—a function classically associated with the nation-state (Cerny; Kobrin).<sup>1</sup> On the one hand, economic and technological interdependencies have created a range of problems that exceed the scope of national sovereignty and can therefore no longer be sufficiently resolved by the unilateral action of national governments. Examples include the regulation of electronic commerce and the protection of intellectual property rights to digital information. On the other hand, the emergence of globally integrated markets poses new challenges for the regulation of domestic problems. More specifically, the increasing economic integration is putting pressure on national governments to redesign national regulations in order to avoid regulatory burdens that restrict the competitiveness of domestic industries (regulatory competition).

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In view of this constellation, national governments frequently try to establish international regimes in order to maintain their capacity to address social and political problems that extend beyond the parameters of national sovereignty. Indeed, the number, relevance, and regulative activities of international regimes have grown steadily over the past few decades (Zürn). Notwithstanding these developments, there is a strong discrepancy between economic and political integration; that is, international political coordination and harmonization are not up to the problems that are emerging from economic and technological challenges.

The gap between political and economic internationalization—which is particularly pronounced in areas characterized by a high demand for international regulation on global ecological problems, global financial markets, or the Internet, for example—can be traced to the fact that the development, formulation, and implementation of international policies is generally a highly time-consuming and complex process. As a consequence, the project of global “governance without government” (Czempiel and Rosenau; Kohler-Koch; Young) reflects a rather unbalanced development. The successful constitution of transnational markets coincides with the inability of governments to address social and political problems that are emerging from economic integration, both at the national and the international level.

Against the backdrop of these uneven developments, recent studies emphasize potential governance contributions from private actors that might compensate for the decreasing capacities of national governments for providing public goods. In this context, governance contributions must not necessarily be restricted to those types of private actors whose explicit organizational objective lies in the provision of certain public goods, such as humanitarian or environmentalist organizations (see Etkins; Princen and Finger; Willets). Rather, private governance contributions or even private authority (Cutler, Haufler, and Porter) might emerge from a more diverse array of private actors, such as business associations (Ronit and Schneider) or multinational companies (Sell; Sinclair; Spar).

Accounting for these tendencies—namely, the challenges to the governance capacity of national governments in the context of economic and technological internationalization and the parallel increase in governance contributions for private actors—this paper assesses the impact of these developments on the relationship between public and private actors with respect to the definition and provision of public goods. Although we do not suppose a hollowing-out of the state, we expect to find a transformation of patterns of governance, specifically a decline in hierarchical forms of intervention, and a rise of other forms of governance, such as regulated self-regulation, private self-regulation, or interfering regulation. This is not to say that we expect private and public governance capacities to be mutually “driven out.” Rather, we observe more synergetic relationships, with private and public activities partially reinforcing each other.

To elaborate on our argument, we proceed as follows. In section two of the paper, we discuss the governance capacity of public and private actors. In section three, we develop different ideal types of governance, patterns based on the distinctive combination of public and private governance capacities. In section four, we present several empirical case studies to illustrate our analytical considerations. In the final section, we summarize the results and draw general conclusions.

#### THE GOVERNANCE CAPACITY OF PUBLIC AND PRIVATE ACTORS

We examine governance from a rather state-centric perspective. Although this view is neither conventional nor fashionable in contemporary political science (see Rhodes), we consider this approach to be analytically more useful in investigating emerging governance patterns than an approach beginning with a null hypothesis—that is, first holding the view that there was “no order” and then setting out to find any pattern (Peters, 11). However, we use a broad definition of the term governance that is not confined to the political guidance and steering actions of governments (*politische Steuerung*), but also covers corresponding activities by societal actors (Mayntz 1998, 7–8). As used in this paper, the term includes all modes of coordinating individual action, such as hierarchies, networks, associations, or markets. Its meaning is not restricted to specific types of social coordination—namely, attempts at collective problem-solving outside of hierarchical frameworks.<sup>2</sup>

In this context, we define *governance capacity* as the formal and factual capability of public or private actors to define the content of public goods and to shape the social, economic, and political processes by which these goods are provided.<sup>3</sup> This concern with the structural capacities of governance, however, does not imply that we neglect the strategic dimension, that is, the questions of conflict and power in the politics that influence how public goods are defined and provided.

The understanding that both public and private actors may contribute to the provision of certain public goods in internationalized environments rests on two findings that have been established in the literature. First, the general challenge emerging from global markets and transnational networks influences the capacity of governments to define and provide public goods. National governments might still have considerable choice about how to effectively address certain policy problems emerging in the context of internationalization, while for other problems such options are less feasible. In the general debate on global governance, the fact that the state is still a viable actor in the governance of society is generally underestimated. Governments have significant capacities not only for adjusting governance structures to new requirements, but also for disposing of important powers and resources that are not available to other actors. This is particularly evident with respect to their ability to accommodate conflicting interests and define governance priorities (Hirst and Thompson; Peters; Weiss).

Second, the classical theory of public goods rests on the assumption that the provision of public goods by private actors is generally characterized by a tension between individual and collective rationality that can only be overcome by governmental intervention. However, both empirical and theoretical findings reveal that this classical assumption can hardly be generalized. Rather, the constellation underlying the provision and the production of a certain good is affected not only by the nonrivalry and the nonexcludability of consumption, but also by other factors, such as properties of the actors involved (Holzinger; Ostrom).

From these considerations we conclude that the governance capacity of both public and private actors largely depends on the specific *strategic constellation* underlying a certain policy. This in turn varies in accord with three attributes: the congruence between the scope of the underlying problem and the regulatory structures of the relevant actors; the type of problem; and the institutional context. As it is hardly possible to offer an exhaustive list of factors relevant within each of these categories, we will focus our attention on those aspects which seem to be particularly pertinent to the actors' capacity to define the content of public goods and to shape the social, economic, and political processes by which these goods are provided. Delineating the attributes that affect the strategic constellation will enable us to identify specific ideal types in the pattern of governance in internationalized environments.

### **Congruence of Problem Structures and Regulatory Structures**

We argue that the governance capacity of both public and private actors increases with the degree of congruence between the scope of the underlying problem and the existing regulatory structures: that is, it increases with the congruence between the scope of the problem and the institutional structure established to purposefully influence the behavior of actors in a specific field.<sup>4</sup> Nevertheless, one statement prevalent in the literature needs to be qualified; namely, that internationalization yields an increasing gap between territorially bound regulatory competencies at the national level and emerging problems of transnational scope (Beck; Zürn).

There are three points to this qualification. First, with respect to *public* actors, it has to be emphasized that not every problem created by globalization is necessarily of global scope, and hence not every problem created by globalization exceeds the regulatory scope of national governments. It might well be that a problem created by economic and technological internationalization can still be sufficiently resolved within the territorial boundaries of one nation-state, while such solutions are no longer feasible for other problems.

Second, under certain conditions, even problems of global scope might be effectively resolved within national boundaries. Such constellations are possible when the extent to which a good is provided is determined

by the largest individual contribution—that is, by the “best shot” (Hirshleifer; Holzinger). Despite the fact that the scope of the problem exceeds a single jurisdiction and thus impedes authoritative rule-making, other actors might accept the contribution of a single actor. An example of this scenario is the provision of a global system for the administration of Internet addresses and domain names. In this context, one state (the United States) has resolved the problem for all other states by developing an appropriate system.<sup>5</sup>

However, this is only one of the basic options concerning the ways in which individual contributions and the provision of a public good can be linked. In many cases the level of provision is based on the sum of individual contributions, for example, the activities of individual states addressing the problem of global warming (Holzinger). Moreover, it is conceivable that the provision of the good is determined by the smallest individual contributions, i.e., “the weakest link” (Holzinger).<sup>6</sup> For instance, the control of illegal and harmful content on the Internet is factually determined by the country with the lowest regulatory standards, given that providers of such material can move their services across national borders. It is becoming apparent that in both of these cases, activities of individual states are no longer sufficient for coping with problems of global scope. Hence, there seems to be a need for transnational solutions.

Third, the congruence between the structures of global problems and the corresponding regulatory structures is not defined solely by the production or aggregation technology underlying the provision of the public good in question—that is, by the way in which individual contributions add up to the production and provision of the good. It is also affected by the degree of development of the international regimes and institutions that address political problems that can no longer be effectively resolved within the territorial boundaries of the nation-state. Governments have maintained their “steering potential” by developing international institutions, the European Union (EU) being the most institutionally differentiated example. Thus, the increasing relevance and development of functionally differentiated international regimes over the past few decades indicates that not every problem demanding transnational regulation automatically exceeds the governance capacities of national governments.

In principle, the same qualifications can be made with respect to the governance capacity of *private* actors. Not every problem requires the existence of transnational structures of private organizations. Private governance capacity might increase in cases in which the distinctive “production function”—as, for instance, in “best shot” constellations—does not require a congruence between the regulatory structures and the territorial scope of the problem. Finally, pre-existing organizational and regulatory structures might increase the capacity to address global problems. For instance, it is argued that the international orientation of pharmaceutical firms and their experience in associative action increases their capacity to cooperate at the international level (Greenwood).

## Type of Problem

It is generally acknowledged that the particular type of problem underlying a good at stake has a significant impact on the politics involved in providing it. We can identify three basic and distinct constellations: coordination, agreement, and defection. Each of these is characterized by a specific problem in resolving conflicts of interests.

*Coordination problems* arise where a relatively strong common interest in the provision of the good and agreement on the regulatory solution are both present. *If* the actors cooperate, it is comparatively easy to provide the public good: we assume that both public and private actors have a high governance capacity.

As soon as international cooperation aims at redistribution, however, it becomes more difficult to achieve international agreement between states or collective action between private actors. Generally, such *agreement problems* are characterized by a common interest in the provision of a public good and a disagreement about the regulatory solution. In interaction between states, examples of such problems range from the environmental standards in the EU and issues such as the data privacy agreement between the United States and the EU to strategic nuclear weapon regimes (Farrell; Héritier, Knill, and Mingers; Müller).<sup>7</sup> For private actors, such constellations can typically be observed in problems of technical standardization. To ensure the compatibility and interconnectivity of their products, producers are generally interested in common standards. For reasons of economic competitiveness, however, they might prefer different options—that is, to try to provide their own product as the “solution” to which other companies would have to adjust (Schmidt and Werle).

While bargaining between actors can still resolve agreement problems in principle, the prospects for both public and private governance are gloomier for *defection problems*. The basic difference between problems of coordination or agreement and problems of defection is that, notwithstanding their common interest in the provision of the good and corresponding cooperation agreements, when there are defection problems the involved actors prefer to free-ride, taking advantage of the contributions of the others. Among public actors, the risk of defection might either hamper the emergence of an international agreement or cause serious compliance problems; consequently, it implies that the public actors have a low governance capacity. Among private actors, this constellation is the problem underlying most types of negative market externalities, such as environmental pollution or consumer protection. To reduce production costs, industrial actors choose the collectively and individually suboptimal action: namely, not to contribute to the provision of the public good.

As in the first dimension, regarding the congruence between problem structures and regulatory structures, we do not discriminate here between public and private actors. While, in principle, the difference

between the public and the private action corresponds to the type of actors involved, the basic differences in the problem structure are the same for both public and private actors.

### **Institutional Context**

Legal rules, rights, and conventions structure institutional opportunities for strategic choice and interaction. By affecting the cost/benefit calculations of the actors involved and by defining a certain distribution of powers and resources between them, the existing institutional structures have an important impact on the capacity for governance by public or private actors. This way, institutions influence the strategies actors employ to achieve their preferences (Knight; Shepsle).

The basic factor affecting the governance capacity of national governments is the structural potential for regulatory adjustments that aim at coping with new problem constellations. For instance, even when there is congruence between the problem structures and national regulatory structures, economic and technological challenges may imply that public goods can no longer be provided if the existing regulatory arrangements are relied upon. Rather, fundamental regulatory adjustments at the national level might be necessary. Hence, the governance capacity of national governments can be expected to increase with the structural potential for such adjustments. In this context, the reform capacity may vary from country to country and from policy to policy.

From a cross-country perspective, the potential for regulatory adjustment depends on the particular institutional arrangements characterizing a country's legal, administrative, and political system (Knill 1999). It decreases with the number of formal and factual institutional veto points (Immergut) that affect the opportunities for national governments to initiate and push through institutional reforms against political and societal resistance. The more a political system is characterized by a federalist structure, multiple-party coalition governments, high ministerial autonomy, corporatist decision-making arrangements, and independent institutions, such as a constitutional court and a central bank, the more the number of veto points generally increases (Scharpf). Although the level of reform capacity does not make it possible to predict the timing or the concrete content and direction of regulatory reforms, it indicates the structural potential of national governments to maintain their governance capacity by adjusting regulatory arrangements in light of the challenges emerging from economic internationalization.

From a cross-policy perspective, options for regulatory adjustment may be constrained by the need to avoid negative externalities for other policy sectors. Such cross-sectoral interdependencies can be observed in many policy areas. In the environmental field, for instance, not only do potentially conflicting domestic and supranational regulations need to be accommodated, but regulatory activities may also have cross-sectoral

impacts on industrial competitiveness, unemployment, economic growth rates and so on. Even more pronounced patterns of cross-sectoral interference can be observed in information and communication technology, where highly dynamic technological developments lead to an increasing erosion of the boundaries between varying sectors, such as telecommunications, consumer electronics, information technology, and broadcasting (Knill 2001). Moreover, options for regulatory adjustment can be constrained when policy interdependencies exist across different institutional levels. For instance, member states of the EU must accommodate national regulations corresponding to requirements spelled out in supranational legislation. Finally, regulatory competition emerging from international market liberalization may factually exclude those options from domestic regulation if they imply competitive disadvantages for the national economy.

The most important institutional factors affecting the governance capacity of *private actors* refer to the organizational structures and the institutional characteristics of relevant decision-making arenas. With respect to organizational properties, we expect the level of private governance capacity to increase with both the strength and the degree of organization of private actors. Organizational strength defines the extent to which organizations are able to influence, monitor, and sanction the behavior of their members—that is, the extent to which the organizations have sufficient autonomy to make decisions on behalf of their members and are capable of ensuring members' compliance with these decisions. The level of organizational strength is generally expected to increase with certain organizational properties, such as centralization and the degree of organization within a specific domain (Streeck and Schmitter 1981).

The degree of organization refers to the extent to which private actors are organized or willing to contribute to the provision of public goods by private organizations. As shown by Mancur Olson, for instance, the size of the group and the extent to which organizations might offer selective incentives for cooperation may play an important role in this context. The degree of organization may have important repercussions for the resources of the actors involved, including financial, personnel, and technological capacities, as well as scientific expertise. Examples of effective private governance reveal that private actors have more appropriate resources for developing corresponding solutions than do bureaucracies, particularly with respect to complex technological problems (Cutler; Knill and Lehmkuhl).

In addition, the existence or absence of competing institutional constellations among which private actors can choose may have important repercussions for the potential for private coordination and self-regulation. The emergence of competing institutional frameworks can be observed in the case of technical standardization, for instance, with different bodies and organizations at varying levels simultaneously developing standards for similar technological problems. The existence of new exit options in the



context of competing institutions weakens the strategic position of potential veto players within single arenas and thus increases incentives for cooperation and coordination (Benz; Genschel; Knill and Lehmkuhl).

Overall, we can conclude that determining the extent to which public and private actors will contribute to the solution of public-goods problems requires a detailed analysis of the particular context that characterizes the strategic constellation underlying the provision of a certain public good. The question, then, is: what patterns of interaction can be expected, given the variations in the governance capacities of private and public actors?

#### FOUR IDEAL TYPES OF GOVERNANCE

To grasp the impact of internationalization on changes in patterns of governance, we can distinguish four ideal types of governance constellations (Table 1), depending on the distinctive level of private and public governance capacities. While reality will often show a more varied picture than that offered by ideal types, such types still have the virtue of providing a standard against which real-world systems can be compared and in the context of which potential differences can be explained.

In developing our typology, we fully acknowledge the insight that “modern governance” (Kooiman) can hardly be understood in terms of either purely public or purely societal activities (Braun), and that it is characterized instead by complex interdependencies and exchange relationships between public and private actors. In view of the organizational complexity of modern societies and the increasing supranational and international interdependencies, policy networks are regarded as dominant and functionally adequate governance arrangements (Kenis and Schneider; Mayntz 1993; Rhodes). Rather than challenging this perspective, the following distinction between the ideal type governance constellations basically seeks to highlight distinctive characteristics and properties of such networks. To label these distinctive characteristics, we refer to a specific mode of regulation in the interaction between public and private actors.

TABLE 1  
Four Ideal Types of Constellations of Private and Public Governance

		Governance Capacity of Public Actors	
		Low	High
Governance Capacity of Private Actors	Low	Interfering Regulation	Interventionist Regulation
	High	Private Self-Regulation	Regulated Self-Regulation

### **Interventionist Regulation**

“Interventionist regulation” refers to constellations which reflect the classical scenario underlying public goods theory: the limited governance capacity of private actors in view of the underlying incentive structure, which can only be compensated for by external power—that is, it requires the hierarchical intervention of the state (assuming, of course, the existence of corresponding capacities of public actors). Although this scenario does not exclude the involvement of private actors, the overall responsibility for the provision of public goods lies with the state, as does the power to decide the content of public goods and the institutional form for providing them (Table 1).

As revealed by the global wave of public sector reforms since the 1980s, hierarchical governance does not automatically imply that public goods are primarily provided by the state. This technocratic perspective of the *interventionist state*, which was a dominant concept until the mid-1970s, has increasingly been replaced by the *regulatory state* (Majone). The provision of public goods and services has basically been left to the market, the role of the state being confined to defining the rules and incentive structures of private actors in such a way that socially desirable outcomes are achieved. This “rolling back” of the state as a result of deregulation, privatization, and administrative reforms has changed the functional role of interventionist regulation. It no longer provides the public goods; instead, it enables them to be provided. Paradoxically, these developments have contributed to strengthening the hierarchical position of the state, rather than weakening it (Wright).

### **Regulated Self-Regulation**

In constellations in which the level of governance capacity of both private and public actors can be considered high, we do not, as a rule, expect interventionist regulation by public actors. Rather, we expect more cooperative patterns of interaction between private and public actors. The relationship between public and private actors might be arranged in various ways: private actors might participate in policy-making and implementation; competencies might be delegated to private organizations; or regulatory frameworks for private self-regulation might be cooperatively developed.

Notwithstanding the fact that public and private contributions to governance are equally relevant in such forms of regulated self-regulation, public-private partnerships, or even private-interest governments,<sup>8</sup> it is important to emphasize that the overall responsibility for providing public goods still lies with the state. The state plays a central and active role and disposes of powers and resources which are not available to societal actors. In particular, governments may provide important incentives (the state may offer financial support or delegate power, or it may refrain from direct and potentially less effective state intervention) in order to

stimulate and increase the integration and organization of societal interests (Eichener and Voelzkow; Knill and Lehmkuhl; Streeck, 18). Moreover, public-private partnerships (or private-interest government) take place under the shadow of hierarchy (Mayntz and Scharpf 1995), the state being capable of relying on traditional forms of intervention should there be governance failures (Peters; Weiss, 38).

### **Private Self-Regulation**

While in the cases detailed above the state is, in principle, still capable of compensating for regulatory failures by direct intervention, this option is no longer feasible when private self-regulation is clearly dominant. The provision of public goods basically depends on the governance capacity of private actors, while governance contributions of public actors are contingent upon the activities of private actors. To be precise, the specific difference between patterns of regulated self-regulation and private self-regulation is connected to the possibility for public intervention. In the case of private self-regulation, the state actually has no capacity to directly intervene in private regulation and to provide a specific good itself, whereas in regulated self-regulation it obviously does.

In such constellations, states might still play a role in providing complementary governance contributions, hence refining and guiding societal self-regulation. For instance, public actors can increase the legitimacy of private governance by officially acknowledging the outcomes of private governance (Lehmkuhl; Ronit and Schneider) or by mediating and moderating between conflicting interests, stimulating the communication and coordination between different actors (Willke). Finally, as shown in recent studies on the role played by European business associations in European and international standardization in the information technology and communications sector, the activities of private actors might restrict the role of public actors, in particular of the EU Commission. In this, its role can be akin to midwifery in the process of associational reform, or it can more directly control cartel-like tendencies that interfere with competition (Knill; Knill and Lehmkuhl).

### **Interfering Regulation**

In all constellations thus far discussed, the high level of public and/or private governance capacity implies more or less favorable conditions for the provision of public goods. The picture looks less promising when both public and private governance capacities are lacking. In such constellations, it is rather unlikely that political problems can be effectively addressed. This can be traced to the fact that, in contrast to the situation with interventionist regulation, governmental intervention can no longer compensate for the low potential for private governance contributions. In view of their limited governance capacities, public actors are able neither to directly provide the public good in question nor to effectively alter the

opportunity structures for societal actors in order to ensure the private provision of the good. To describe this constellation, we introduce the category of interfering regulation.

Interfering regulation implies that, despite the restrictions on governmental capacities, the retreat of the state is not expected. Governments can still use their hierarchical powers to interfere in private activities. They might be able to “disturb” or “obstruct” such activities that create negative externalities. For example, in numerous domestic decisions, national courts have required that Internet portals ensure either that harmful content be banned from their servers or that the distribution of certain products be prohibited in a specific country.<sup>9</sup> Notwithstanding the fact that such legislation can be easily circumvented by offering the same content from countries with less demanding regulations, such activities might have some regulating influence on the behavior of private actors. Although the impact of such “policies of pinpricks” should not be underestimated (in terms of educating or persuading private actors), governmental interference will hardly be sufficient to provide effective solutions to this problems.

The above considerations indicate that the economic and technological challenges associated with globalization might have a highly varying impact on national governmental patterns and governance capacities. It is also apparent that national governments are still viable actors in this context. However, the picture is a varied one. We think that an overlap between the individual and the public good occurs more often than is commonly believed. As has been shown, however, the governance capacity of private actors may vary significantly. Finally, our analytical considerations lead us to expect private and public governance contributions to generally reinforce one another. In particular, the scenarios of public-private partnerships and private self-regulation reveal the mutually reinforcing relationship between public and private governance activities.

#### BROADER TRENDS OF TRANSFORMATION IN INTERNATIONALIZED PATTERNS OF GOVERNANCE: THE INTERNET AS AN ILLUSTRATIVE CASE

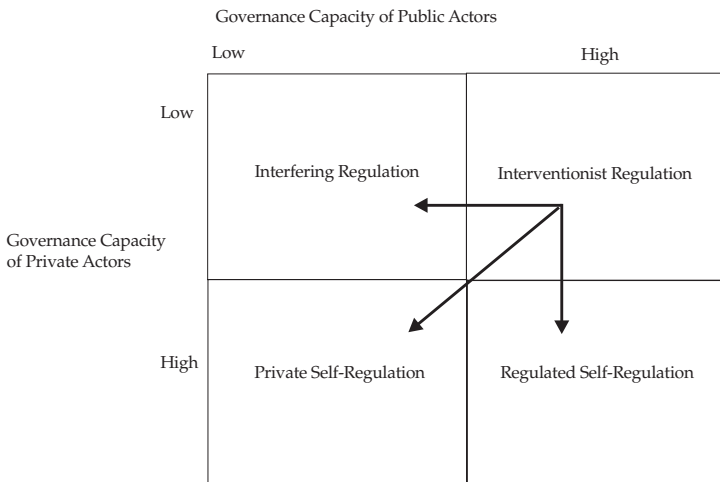
In our effort to empirically illustrate how the dependent variable (i.e., patterns of governance) has changed in the course of economic and political internationalization, our chosen cases have to conform to two important criteria. First, the cases must refer to economic activities with an important international dimension. Second, the cases must be characterized by a variation in the governance capacity of both public and private actors. Alternating these two aspects allows us both to identify specificities that internationalized problems pose to national governance arrangements and to systematically associate these specificities with the respective governance capacities of the public and private actors.

It is not our intention to provide exhaustive empirical proof of changing governance patterns. Instead, we have selected examples to illustrate three ways in which an interventionist, state-dominated form for providing public goods is transformed (Table 2). In this context, we consider cases of Internet regulation to be particularly appropriate, as the Internet makes it possible to counter statements that there has been a fundamental weakening of state power; in fact, it seems that cyberspace is not even necessarily immune to unilateral governmental regulation. Given the breakneck speed of changes in the Internet, it might be for political scientists what the *Drosophila melanogaster* fruit fly, with its fast regeneration, is for geneticists. Our examples include the provision of Internet domain names, questions of standardization of copyrights, and content regulation on the Internet.

**Pattern One: From Interventionism to Regulated Self-Regulation: The Regulation of Internet Domain Names**

An important requirement for global communication via the Internet is the development of a unitary system that administers both the registration and allocation of Internet domain names. Without such a system, which allocates individual addresses, it would not be possible either to identify individual users or to exchange data between different users around the world. As domain name has become an important type of property in electronic communication, one that represents position, location, path, and identity, administering unique addresses on the Internet has become a global public good. Since 1998, a private, nonprofit organization, the Internet Corporation for Assigned Names and Numbers (ICANN), has assumed the responsibility for this regulation. It oversees an area that can neither be completely left to

TABLE 2  
**Three Patterns of Transformation of Public/Private Interaction**



the market nor be exclusively governed by national public authorities (Werle and Leib, 1). Taking the history of the administration of Internet domain names as an example, we may illustrate the shift from a hierarchical to a cooperative mode of public-private interactions in the provision of a public good that is globally significant.<sup>10</sup>

In its early days, the development and administration of the domain name system went largely unobserved and undisturbed as private self-regulation within the public realm. In collaboration with the U.S. Department of Defense and the National Science Foundation (NSF), an informal organization known as the "Internet Assigned Numbers Authority" assigned and listed Internet protocol addresses. By 1991, the NSF had assumed full responsibility for the management of the nonmilitary part of the Internet. After the U.S. Congress authorized the NSF to allow commercial activities on the Internet, the NSF made a contract with Network Solutions, Inc., a private for-profit firm, which then became responsible for key registration, coordination, and maintenance functions of the domain name system.

As the move to commercial uses of the Internet and the rapid growth and global expansion of the Internet progressed, however, the domain name system became politicized. This occurred for two reasons. On the one hand, the U.S. Congress argued for the introduction of competition and privatization into the management of the infrastructure. On the other hand, European governments, in particular, no longer wanted to accept a solution under the control of the American government, and they negotiated for greater autonomy in the administration of domain names. Although the U.S. government started to keep a tighter rein on the governance of domain names, it could not prevent this twofold pressure from leading to a redelegation of the administration of Internet addresses. In 1998 that responsibility was delegated to ICANN, and the central role of the U.S. government in governing cyberspace was subsequently weakened.

The new arrangement is characterized by a relatively high governance capacity on the part of both public and private actors. At the same time, however, public actors have not only significantly contributed to the emergence of a highly competent private organization, but they still have significant influence over ICANN: they provide the framework for the organizational conditions that must be met in order for ICANN to obtain the authority to control and administer the registration and allocation of domain names (Cuker; Hadfield).

Two aspects of the situation significantly hamper ICANN's position as a free and independent regulatory body. First, its regulatory capacity is based on contracts with the U.S. Department of Commerce, which must be renewed annually. Second, the U.S. government has not yet fulfilled its contractual obligation to delegate the final authority over some major root servers to ICANN. This shows that power and conflict among different interests—in the present case, between the U.S. government on one

hand and European governments and ICANN on the other—affect the analysis of solutions at the international level.

Nonetheless, the strong self-governing capacity of ICANN, as a private organization, finds expression in its capacity to formulate and implement the substantive and procedural laws within its jurisdiction by itself. The capacity to authorize new top-level domains is one example of this capacity; another is the Uniform Domain Name Dispute Policy, a quasi-administrative procedure to authoritatively resolve disputes on the misuse of domain name registrations.<sup>11</sup>

### **Pattern Two: From Interventionism to Private Self-Regulation: The Standardization of Copyrights on the Internet**

It is indispensable for economic activities that property rights be defined and secured. Given the close interrelation between guaranteeing property rights and economic growth, states have traditionally established systems of rules and have adapted these to economic and technological changes (North). While property rights and commerce are also connected in economic activities on the Internet, the specific character of the Internet partly devalues the set of instruments traditionally applied by states.

Taking a look at the central areas of Internet activities—software, publishing, and financial services—may help us to grasp the specific constellation of this problem. The products of all these branches are intangible goods: texts, ideas, and information. The fact that the Internet allows these goods and services to be easily delivered and cheaply reproduced means that it not only offers a very interesting commercial perspective but also bears a number of substantive risks: it is relatively easy to illegally copy these intangible goods without the risk of detection (Spar, 38). Thus, property-rights protection has become a central issue for information-based economic activities on the Internet.

To solve the problem of protection of property rights on the Internet, states have tried, either individually or by international negotiations, to reform national or international property-rights regulations. However, neither national nor international efforts have brought about a satisfying solution to it. Most prominent among these efforts has been the 1996 effort of the U.S. government to enhance the protection of digital intellectual property, which failed at both the national and the international levels. The attempt to ensure property-rights protection within the framework of the World Intellectual Property Organization (WIPO) failed because of the resistance of a number of states, which argued that the approach was too restrictive. The U.S. Congress also rejected the proposals, fearing that the property-rights regulation might have a negative impact on individuals' rights to free information.

Given the failure of public actors to provide a public governance mechanism, private actors have developed initiatives to safeguard property rights on their own. To mention one example, IBM has recently launched

a project that is bound to provide copyright holders with effective control over their property, by using advanced technologies such as digital watermarks, specific hardware systems, or digital containers (Spar, 40). The complementary role of public actors is finding expression at both the national and the international levels in litigation about property rights violations, which are being dealt with before public courts or within the framework of the WIPO and the World Trade Organization (WTO).

### **Pattern Three: From Interventionist to Interfering Regulation: Internet Content Regulation**

Even without supporting the idea of anarchy in cyberspace, there is good reason to think that the Internet, with its decentralized and transjurisdictional character, challenges the traditional means that states have of controlling illegal and harmful content (related to issues of violence or pornography, for instance). While the hierarchical regulation of broadcasting and television services traditionally secured the strong regulation of content, new modes of communication in general—and the Internet in particular—have made it possible to evade territorial regulation. In addition to technical restraints, the attempts to extend content regulations that were already being applied to broadcasting services have been hampered in some countries by constitutional provisions. For example, the U.S. Supreme Court stated that by extending the existing provisions on broadcasting regulation to the area of the Internet, the Communications Decency Act of 1996 made unconstitutional restrictions on individuals' rights to information (CEC; Grzeszick; Schulz).

Given these two constraints on traditional hierarchical modes of public regulation, states either try to indirectly regulate extraterritorial activities or rely on public/private partnerships. With respect to the first attempt, local damage caused by offshore Internet providers is regulated domestically: in-state end-users who obtain and use illegal content are penalized. The case of CompuServe and the Bavarian court, in which the court declared that Internet service providers are generally responsible for content control, comprises one very good example of interference by public actors. Some scholars use this case to underline the idea that offshore regulation evasion does not prevent a nation from regulating extraterritorial activity (Goldsmith, 1222).

Yet the precarious character of technical solutions in a highly dynamic field has brought about other, softer forms of public/private interaction. For instance, content liable to corrupt the young may only be transmitted if a provider has installed filtering protection measures and position-monitoring protection standards (Grzeszick, 194). In addition, Internet service providers may be obliged to establish what are known as self-regulatory institutions to develop codes of conduct on a voluntary basis (CEC; Schulz, 185).



Thus, in the area of Internet content regulation, a clear shift from an interventionist to an interfering mode of regulation can be observed. Given the restricted capacity of their traditional instruments, public actors and institutions increasingly either have begun to restrict their activities to interfering with market activities or sought to incorporate private actors in soft regulation or voluntary self-regulatory arrangements. However, private actors have only a very limited interest in establishing self-regulatory capacities through coordinated action.

## CONCLUSION

In this paper, we have not adopted the view that the demise of the state is near at hand, as is so frequently done in discussions about the implications of political and economic internationalization. Rather, from a state-centric perspective, we have operated with a broad view of the term governance, which includes different types of actor configurations, their combinations, and particularly their interactions (Mayntz 1998, 18f). According to our proposal, the actual pattern of governance can be related to the respective governance capacities of public and private actors, which hinge in turn on the strategic constellation underlying the provision of public goods. The specific strategic constellation varies along three dimensions: namely, the congruence between the scope of the underlying problem and the organizational structures of the related actors; the type of good problem; and the institutional context. For their part, each of these combines a number of factors.

With this concept in mind, we have identified four ideal types of governance, enabled by their differing configurations of public and private capacities to formally or factually influence in various ways the social, economic, and political processes employed in the provision of certain goods. Assessing the implications of economic and political internationalization on the governance capacities of public and private actors, we suggest describing internationalization as a process in which the patterns of governance are transformed along three paths: from interventionist regulation to regulated self-regulation; from interventionist regulation to private self-regulation; and from interventionist regulation to interfering regulation.

Without commenting extensively on the practical and normative merits of each of these constellations, we would like to conclude with three comments. First, the analysis of the consequences of internationalization for the patterns of governance suggests that the expectations of weakening of the state, or a mutual driving-out of governance activities of public and private actors, can hardly be confirmed. The relationship between public and private actors is not free of conflict; neither is it paralyzed by conflict. In essence we are confronted with dynamic, synergetic relationships, with public and private contributions reinforcing each other over time.

Second, these mutual dependencies between public and private actors and their capacity to cope with specific problems are apparent in the implementation of certain regulatory arrangements. On the one hand, research in comparative politics has shown that the implementation of regulatory programs is one of the major deficiencies in the domestic arena (Streeck and Schmitter 1985, 22). However, there is good reason to expect that the implementation of international agreements suffers from similar problems. Regulated self-regulation is thought to provide a remedy for this deficiency at the national level, and one might expect it to help with compliance problems in the international realm, too. On the other hand, empirical examples show that even when private actors have achieved a certain organizational capacity and thereby increased their self-regulatory competence, public assistance—usually national assistance—is primarily required when it comes to implementing private solutions.

Finally, we have to acknowledge that we have only addressed one dimension of the problem related to the process of internationalization—that is, the regulatory dimension. As others have argued, problems related to accountability and the democratic legitimacy of regulatory structures are at least as important as those related to the dimension discussed here (Scholte; Wolf). Thus, a crucial question becomes: how is it possible to ensure that private governance activities are kept responsive to wider societal interests? The higher the capacity of public actors to solve problems, the less problematic this question becomes. Concern about the legitimacy and the substance of private governance activities is another matter, however. There, the less public actors are able to influence the behavior of private actors, the more difficult it is.

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#### NOTES

1. Notwithstanding the broad variety and sometimes confusing conceptions of public goods (Malkin and Wildavsky), in this paper we stick to the classic economic definition, according to which a public good is defined by the criteria of nonrivalry and the nonexcludability of consumption.
2. A more restrictive definition of governance is used in, for instance, the studies of Czempiel and Rosenau (1992), Kooiman (1993), and Rhodes (1997).
3. Another conceptual approach to coping analytically with different dimensions describing the context for the provision of public goods distinguishes between provision, production, and consumption (see McGinnis 1999b, 3f., and other contributions in McGinnis 1999a).

4. For the distinction between regulatory and performance structures, see Mayntz and Scharpf.
5. According to hegemonic stability theory, a hegemonic state might provide a certain good globally when accepting the short-term disadvantage of a higher investment for the long-term benefits.
6. Note that these aggregation examples reflect extreme cases; other forms are also possible.
7. Regime analysts with inclinations towards game theory draw a distinction between coordination problems (e.g., the battle of the sexes), with stable equilibria, and collaboration problems (e.g., prisoner's dilemma, chicken), with equilibria being either suboptimal or absent. In addition, they emphasize the importance of compliance mechanisms for collaboration problems (Levy, Young, and Zürn, 284).
8. We use a slightly broader concept of private-interest government than do Streeck and Schmitter, who reserve the concept for arrangements under which an attempt is made to make associative, self-interested collective action contribute to the achievement of public policy objectives (Streeck and Schmitter 1985). In particular, we do not equate private-interest governments with neocorporatist interest intermediation.
9. In October 2001, a French court handed down an interim injunction according to the terms of which U.S. Internet provider Yahoo had to block the distribution of Nazi objects on its servers for French users.
10. We thank Marc Hollitscher and Volker Leib for very helpful comments on the ICANN case.
11. In the first six months of the policy's existence, up until September 2000, there were 1,573 complaints and 1,012 final decisions (Bettinger, 1110). See also Mueller.

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